

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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SANDATA TECHNOLOGIES, INC., :
Plaintiff, : 05 Civ. 9546 (LMM)
- v - : MEMORANDUM AND ORDER
INFOCROSSING, INC., :
Defendant. :
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MCKENNA, D.J.

1.

In this action, Sandata Technologies, Inc. ("Sandata") claims that Infocrossing, Inc. ("Infocrossing") is infringing three patents belonging to Sandata -- U.S. Patent No. 5,255,183 ("'183 Patent"), U.S. Patent No. 5,646,839 ("'839 Patent"), and U.S. Patent No. 5,963,912 ("'912 Patent") -- and seeks damages and injunctive relief; Infocrossing asserts four counterclaims: (1) for a declaratory judgment of invalidity, unenforceability and non-infringement of the three patents; (2) for a declaratory judgment of non-infringement of the three patents; (3) alleging the violation by Sandata of the federal antitrust laws; and (4) alleging the violation by Sandata of New York's Donnelly Act.

2.

In this Memorandum and Order the Court considers three motions: (i) Sandata's motion (Docket No. 42) for an order, pursuant to Fed. R. Civ. P. 12(f) and 12(b)(6), dismissing the

eighth affirmative defense, the antitrust (including Donnelly Act) counterclaims, and a portion (that based upon alleged fraud and inequitable conduct) of the first counterclaim for declaratory relief, of Infocrossing's First Amended Answer and Counterclaim; (ii) Sandata's motion (Docket No. 91) for an order striking Infocrossing's Second Amended Answer and Counterclaim; and (iii) Sandata's motion (Docket No. 58) for an order striking Infocrossing's supplemental memorandum and supplemental declaration of Mr. Carty in opposition to Sandata's motion for dismissal described above.

3.

The Court first considers Sandata's motion for an order striking Infocrossing's Second Amended Answer and Counterclaim.

Infocrossing's First Amended Answer and Counterclaim, dated August 29, 2006, was filed on or about that date. Infocrossing's Second Amended Answer and Counterclaim, dated May 31, 2007, was filed on or about that date.

The ground of Sandata's motion is that Infocrossing had neither the consent of Sandata nor permission of the Court to serve the Second Amended Answer and Counterclaim when it did, as required by Fed. R. Civ. P. 15(a).

On April 20, 2007, however, Magistrate Judge Katz (to whom pretrial supervision of this and related cases has been referred), at the request of Infocrossing, in a memorandum endorsed

dated April 20, 2007, extended the deadline for amending the pleadings to May 31, 2007. (See Carty Decl., July 2, 2007, Ex. 1.) Sandata's arguments that this order was somehow inadequate to allow Infocrossing to amend its pleading, and to file the amended pleading, are not at all persuasive.

Motion (Docket No. 91) denied.

4.

The Second Amended Answer and Counterclaim amends allegations of the First Amended Answer and Counterclaim that are the subject of Sandata's motion for dismissal, which cannot be appropriately considered on the previously submitted papers. Accordingly, Sandata may have 30 days from the date hereof to respond to the Second Amended Answer (which response, at Sandata's option, may be a Rule 12 motion, in which case Infocrossing may have 30 days to respond and Sandata 15 days to reply).

Motion (Docket No. 42) denied as moot, with leave to Sandata to respond as set forth above.

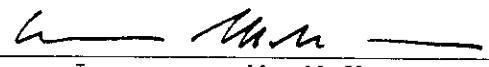
5.

Since Sandata's Rule 12 motion is denied as moot, it follows that its motion to strike certain opposing papers is also moot.

Motion (Docket No. 58) denied as moot.¹

SO ORDERED.

Dated: February 14, 2008



Lawrence M. McKenna
U.S.D.J.

¹ All applications for sanctions by either side included in the motions considered herein are denied.